The Facebook, Inc. v. Connectu, LLC et al Doc. 25

G. HOPKINS GUY, III (State Bar No. 124811)
hopguy@orrick.com
I. NEEL CHATTERJEE (State Bar No. 173985)
nchatterjee@orrick.com
MONTE COOPER (State Bar No. 196746)
mcooper@orrick.com
THERESA A. SUTTON (State Bar No. 211857)
tsutton@orrick.com
YVONNE P. GREER (State Bar No. 214072)
ygreer@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Plaintiffs
THE FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA, Defendants.	Case No. 5:07-CV-01389-RS **DECLARATION OF MONTE M. F. COOPER IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE DEFENDANTS' LIABILITY PURSUANT TO CALIFORNIA PENAL CODE SECTION 502(C) AND 15 U.S.C. § 7704(A)(1) AND 15 U.S.C. § 7704(B)(1)**

Dockets.Justia.com

I, Monte Cooper, declare as follows:

1. I am Of Counsel at the law firm of Orrick, Herrington & Sutcliffe, counsel for The Facebook, Inc., and Mark Zuckerberg. I am an active member in good standing of the Bar of the States of California and Colorado. I make this declaration in support of Plaintiffs' Motion for Partial Summary Judgment Re Defendants' Liability Pursuant to California Penal Code Section 502(C) and 15 U.S.C. § 7704(a)(1) and 15 U.S.C. § 7704(b)(1). I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the April 25, 2006, deposition of Mark Zuckerberg. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

3. Attached hereto as **Exhibit 1A** is a true and correct copy of pages 236-239; 241-245 of Mark Zuckerberg's April 25, 2006 deposition. These pages have been de-designated by Plaintiff. Plaintiffs include these pages also as part of Exhibit 1 for the Court's convenience in reviewing the file.

4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the March 1, 2006 deposition of Max Kelly. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

5. Attached hereto as **Exhibit 3** is a true and correct copy of the March 24, 2004 Savvy Service Agreement, Bates labeled SAVVY000123 – SAVVY000132.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the December 22, 2004 TerreNap West Data Center Service Order, Bates labeled NAP00007 – NAP00008. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

7. Attached hereto as **Exhibit 5** is a true and correct copy of the August 9, 2004 Master Service Agreement contract with Equinix, Bates labeled EQ00007 – EQ000026.

8. Attached hereto as **Exhibit 6** is a true and correct copy of a May 4, 2004 e-mail from Cameron Winklevoss to Marc M. Pierrat, Subject: "Re: registration," Bates labeled C003990 – C003991. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY**

UNDER SEAL]

9. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the January 16, 2006 deposition of Cameron Winklevoss. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

10. Attached hereto as **Exhibit 8** is a true and correct copy of Plaintiff and Counterclaim Defendant ConnectU LLC's Responses to Defendant and Counterclaim Plaintiff TheFacebook, Inc.'s First Set of Interrogatories (Nos. 1-17), served in the related Action *ConnectU v. Facebook*, Case No. 1:04-11923 (DPW), on August 24, 2005.

11. Attached hereto as **Exhibit 9** is a true and correct copy of documents Bates labeled GUCWA 0003, GUCWA 0009, GUCWA 0022-25, GUCWA 0032-33, GUCWA 0048-49, GUCWA 0056-60, GUCWA 0071, GUCWA 0073-78, GUCWA 0097-0099, GUCWA 0124, GUCWA 0128, GUCWA 0130, GUCWA 0142, GUCWA 0152-153.

12. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the January 16, 2006 deposition of Divya Narendra. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

13. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the January 16, 2006 deposition of ConnectU by Cameron Winklevoss. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

14. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the January 16, 2006 deposition of Tyler Winklevoss. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

15. Attached hereto as **Exhibit 13** is a true and correct copy of the May 24, 2004 Supplemental Declaration of Tyler Winklevoss in Support of Defendants' Reply to Opposition to Motion to Quash Service of Complaint and Summons for Lack of Personal Jurisdiction.

16. Attached hereto as **Exhibit 14** is a true and correct copy of the May 24, 2004 Supplemental Declaration of Cameron Winklevoss in Support of Defendants' Reply to Opposition to Motion to Quash Service of Complaint and Summons for Lack of Personal Jurisdiction.

17. Attached hereto as **Exhibit 15** is a true and correct copy of the May 24, 2004 Supplemental Declaration of Divya Narendra in Support of Defendants' Reply to Opposition to Motion to Quash Service of Complaint and Summons for Lack of Personal Jurisdiction.

18. Attached hereto as **Exhibit 16** is a true and correct copy of the Amended Response of Defendant Cameron Winklevoss to Form Interrogatories, served on April 3, 2006.

19. Attached hereto as **Exhibit 17** is a true and correct copy of the Amended Response of Defendant Tyler Winklevoss to Form Interrogatories, served on April 3, 2006.

20. Attached hereto as **Exhibit 18** is a true and correct copy of the Amended Response of Defendant Divya Narendra to Form Interrogatories, on April 3, 2006.

21. Attached hereto as **Exhibit 19** is a true and correct copy of the Second Amended Response of Defendant ConnectU LLC to Form Interrogatories, on April 3, 2006.

22. Attached hereto as **Exhibit 20** is a true and correct copy of a May 3, 2004 e-mail from Cameron Winklevoss to Howard Winklevoss, Subject: "Re: Social Networks," Bates labeled C003865 – C003869.

23. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the 30(b)(6) deposition of iMarc, Inc., taken October 5, 2007.

24. Attached hereto as **Exhibit 22** is a true and correct copy of a June 11, 2004 e-mail from Marc Pierrat to Fred LeBlanc and Nick Grant, Subject: "Re: mining the facebook," Bates labeled iMarc000798.

25. Attached hereto as **Exhibit 23** is a true and correct copy of a June 11, 2004 e-mail from Marc Pierrat to Fred LeBlanc, Dave Tufts and Nick Grant, Subject: "mining the facebook," Bates labeled iMarc000802.

26. Attached hereto as **Exhibit 24** is a true and correct copy of a June 11, 2004 e-mail from Nick Grant to Marc Pierrat, Fred LeBlanc and Dave Tufts, Subject: "Re: mining the facebook," Bates labeled iMarc000800.

27. Attached hereto as **Exhibit 25** is a true and correct copy of a July 6, 2004 e-mail from 'seluraved@gmail.com' to Dave Tufts, Subject: "|iMarc| Personal Mail," Bates labeled iMarc000659.

28. Attached hereto as **Exhibit 26** is a true and correct copy of a July 22, 2004 e-mail from Marc Pierrat to Dave Tufts, Nick Grant and Marc Pierrat, Subject: "RE: FW: Jennifer Star wants you to join Connect," Bates labeled iMarc000629 – iMarc000631.

29. Attached hereto as **Exhibit 27** is a true and correct copy of a September 14, 2004 e-mail from David Gomel to Dave Tufts and Nils Menten, Subject: "Re: |iMarc| WWW Mail," Bates labeled iMarc000474.

30. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from the October 5, 2006 deposition of Divya Narendra, taken in the ConnectU, LLC v. Zuckerberg et al, Civil Action No. 1:04-cv-11923, United States District Court, District of Massachusetts. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

31. Attached hereto as **Exhibit 29** is a true and correct copy of an August 26, 2004 e-mail from Marc Pierrat to Cameron Winklevoss, Bates labeled C007512 – C007517. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

32. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from the January 29, 2007 deposition of Pacific Northwest Software. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

33. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the June 19, 2007 deposition of Winston Williams. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

34. Attached hereto as **Exhibit 31A** is a true and correct copy of pages 39, 56, 87-89, 99-100; 156-159 of Winston Williams' June 19, 2007 deposition. These pages have been de-designated as non-confidential by the Defendant. Plaintiffs include these pages also as part of Exhibit 31 for the Court's convenience in reviewing the file.

35. Attached hereto as **Exhibit 32** is a true and correct copy of documents Bates labeled PNS01766 – PNS01777. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

36. Attached hereto as **Exhibit 33** is a true and correct copy of documents Bates labeled C011073 – C011082. **[CONFIDENTIAL DOCUMENT SUBMITTED**

SEPARATELY UNDER SEAL]

37. Attached hereto as **Exhibit 34** is a true and correct copy of a May 25, 2005 e-mail from Wayne Chang to John Taves, Bates labeled PNS000015 – PNS000016. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

38. Attached hereto as **Exhibit 35** is a true and correct copy of excerpts from the August 9, 2005, 30(b)(6) deposition of ConnectU, taken in the related action ConnectU, LLC v. Zuckerberg et al, Civil Action No. 1:04-cv-11923, United States District Court, District of Massachusetts.

39. Attached hereto as **Exhibit 36** is a true and correct copy of a document Bates labeled PNS02096. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

40. Attached hereto as **Exhibit 37** is a true and correct copy of a document Bates labeled C011010. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

41. Attached hereto as **Exhibit 38** is a true and correct copy of the Privacy Statement for 'www.ConnectU.com', Bates labeled C000027 and produced by ConnectU as of June 2005. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

42. **Exhibit 39** intentionally skipped.

43. Attached hereto as **Exhibit 40** is a true and correct copy of an April 21, 2005 e-mail from 'jsteven3@nd.edu' to Mark Ruocco, Bates labeled C004512. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

44. Attached hereto as **Exhibit 41** is a true and correct copy of documents Bates labeled PNS001377-86, PNS0281451-54, PNS0281495, PNS0281504-14, PNS0281520, PNS0281522-26, PNS0296805-06 and PNS0320945. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

45. Attached hereto as **Exhibit 42** is a true and correct copy of a May 10, 2005, e-mail from Winston Williams to Cameron Winklevoss, Tyler Winklevoss, Joel Voss and John Taves, Bates labeled CUCA02972. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY**

UNDER SEAL]

46. Attached hereto as **Exhibit 43** is a true and correct copy of an April 22, 2005 e-mail from Hanah Kim to Thomas Cheng, Bates labeled CUCA000172. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

47. Attached hereto as **Exhibit 44** is a true and correct copy of Defendant Winston Williams' Response to First Set of Interrogatories, served June 18, 2007.

48. Attached hereto as **Exhibit 45** is a true and correct copy of February 17, 2005 e-mail from Cameron Winklevoss to Wayne Chang, David Gucwa, John Taves, Winston Williams and Joel Voss, Bates labeled PNS000842 – PNS000843. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

49. Attached hereto as **Exhibit 46** is a true and correct copy of a February 18, 2005 e-mail from Tyler Winklevoss to Tyler Winklevoss, Cameron Winklevoss, 'drttol@gmail.com', Winston Williams, Joel Voss and John Taves, Bates labeled PNS001238 – PNS001239. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

50. Attached hereto as **Exhibit 47** is a true and correct copy of a February 22, 2005 e-mail from Cameron Winklevoss to Winston Williams, Wayne Chang and David Gucwa, Bates labeled C004243. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

51. Attached hereto as **Exhibit 48** is a true and correct copy of a May 25, 2005 e-mail from Wayne Change to John Taves, Bates labeled PNS001334 – PNS001340. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

52. Attached hereto as **Exhibit 49** is a true and correct copy of the an article titled *Business, Casual*, by Kevin J. Feeney, dated, Feb. 24, 2005, Bates labeled C006186 – C006196.

53. Attached hereto as **Exhibit 50** is a true and correct copy of documents Bates labeled CUCA03087 – CUCA03090. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

54. Attached hereto as **Exhibit 51** is a true and correct copy of a February 16, 2005 e-mail from John Taves to Wayne Chang and Cameron Winklevoss, Bates labeled C008392.

[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]

55. Attached hereto as **Exhibit 52** is a true and correct copy of February 20, 2005 e-mail from Wayne Chang to Winston Williams, Bates labeled C008657. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

56. Attached hereto as **Exhibit 53** is a true and correct copy of a February 19, 2005 e-mail from Wayne Chang to David Gucwa, Cameron Winklevoss and Winston Williams, Bates labeled C008662. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

57. Attached hereto as **Exhibit 54** is a true and correct copy of a February 19, 2005 e-mail from Cameron Winklevoss to Wayne Chang, Winston Williams and David Gucwa, Bates labeled C010359. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

58. Attached hereto as **Exhibit 55** is a true and correct copy of documents Bates labeled C009887 – C009896. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

59. Attached hereto as **Exhibit 56** is a true and correct copy of the Third Amended Response of Defendant Cameron Winklevoss to Plaintiff's First Set of Special Interrogatories (1-23), served on April 3, 2006.

60. Attached hereto as **Exhibit 57** is a true and correct copy of excerpts from the June 12, 2007 30(b)(6) deposition of Pacific Northwest Software. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

61. Attached hereto as **Exhibit 58** is a true and correct copy of February 16, 2005 (12:58 p.m.) e-mail from John Taves to Winston Williams, Bates labeled C008389 – C008391. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

62. Attached hereto as **Exhibit 59** is a true and correct copy of February 17, 2005 e-mail from Cameron Winklevoss to 'drttol@gmail.com', Winston Williams, Tyler Winklevoss, Joel Voss and John Taves, Bates labeled C006537. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

63. Attached hereto as **Exhibit 60** is a true and correct copy of Defendant Pacific Northwest Software's Response to First Set of Interrogatories, served on June 11, 2007.

64. Attached hereto as **Exhibit 61** is a true and correct copy of a February 6, 2006 e-mail from Winston Williams to Cameron Winklevoss, Bates labeled CUCA02976 – CUCA02977. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

65. Attached hereto as **Exhibit 62** is a true and correct copy of the Report of the Committee on Commerce, Science and Transportation on S. 877, S. Rep. No. 102, 108th Cong., 1st Sess. (2003).

66. Attached hereto as **Exhibit 63** is a true and correct copy of an April 20, 2005 e-mail from 'Danny Abad' to 'vreoneno@ucdavis.eud', **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

67. Attached hereto as **Exhibit 64** is a true and correct copy of an April 20, 2005 e-mail from 'JoJo Lagace' to 'alchou@ucds.edu', Bates labeled CUCA000210. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

68. Attached hereto as **Exhibit 65** is a true and correct copy of the January 2, 2008 Declaration of Winston Williams in Response to Court Order Dated December 12, 2007.

69. Attached hereto as **Exhibit 66** is a true and correct copy of the December 21, 2007 Declaration of John Taves on Behalf of Pacific Northwest Software, Inc. in Response to Court Order Dated December 12, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2008, in Boston, Massachusetts.

Dated: January 7, 2008

/s/ Monte M. F. Cooper /s/
Monte M.F. Cooper

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 7, 2008.

Dated: January 7, 2008.

Respectfully submitted,

/s/ I. Neel Chatterjee /s/

I. Neel Chatterjee

OHS West:260361264.1